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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

14 Michael Katz-Lacabe and Dr. Jennifer  
15 Golbeck, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

VS.

18 ORACLE AMERICA, INC., a corporation  
19 organized under the laws of the State of  
Delaware,

Defendant.

Case No. 3:22-cv-04792-RS

**PLAINTIFFS' STATEMENT REGARDING  
DEFENDANT ORACLE AMERICA, INC.'S  
ADMINISTRATIVE MOTION TO  
CONSIDER WHETHER PLAINTIFFS'  
MATERIAL SHOULD BE SEALED**

Judge: Hon. Richard Seeborg

Date: March 28, 2024

Time: 1:30pm

Courtroom: 3

Date Action Filed: August 19, 2022

Trial Date: None set

1           As required by Civil Local Rules 7-11 and 79-5(f), Plaintiffs file this statement regarding  
 2 Oracle's Administrative Motion To Consider Whether Plaintiffs' Material Should Be Sealed.  
 3 Plaintiffs incorporate their Administrative Motion to File Under Seal and the related declaration  
 4 of David T. Rudolph by reference (Dkts. 98, 98-1), and submit a proposed order that identifies the  
 5 portion of Oracle's Surreply Response sought to be sealed.

6           As an initial matter, Oracle improperly filed its sealing request under the incorrect rule  
 7 (the correct rule for this motion is Civil Local Rule 79-5(c)). Oracle *itself* produced and  
 8 designated the documents quoted in the Surreply and Surreply Response as "Highly Confidential-  
 9 Attorneys' Eyes Only"<sup>1</sup> under the Protective Order in this matter. It has not modified those  
 10 designations, nor did it object to or otherwise respond to Plaintiffs' Administrative Motion to Seal  
 11 this same material (Dkt. 98). Apparently now unwilling to stand by its designation of this material  
 12 as warranting sealing, by filing the present motion as a motion to consider whether "Plaintiffs'"  
 13 Material"—rather than its own—should be sealed, Oracle misrepresents the nature of these  
 14 documents (which it, and not Plaintiffs, produced) to the Court, and sidesteps its obligations to  
 15 defend its own confidentiality designations.

16           Nevertheless, adequate independent grounds exist for sealing the material quoted in  
 17 Oracle's Surreply Response.

18           The text sought to be sealed in Oracle's Surreply Response is a sensitive political segment  
 19 Oracle takes from Plaintiffs' Surreply Brief. *See* Surreply, Dkt. 98-2 at 5 n.13. Plaintiffs have  
 20 already moved to seal that interest segment through their own motion and declaration. *See* Dkt.  
 21 98; Rudolph Decl., Dkt. 98-1 at 6. As Plaintiffs explain in their own sealing motion, while courts  
 22 must balance "the competing interests of the public [against those of] the party who seeks to keep  
 23 certain judicial records secret," *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097  
 24 (9th Cir. 2016) (citation omitted), Plaintiffs' reasons for sealing a sensitive portion of Oracle's  
 25 surreply response "outweigh the general history of access and the public policies favoring

26  
 27           <sup>1</sup> The Protective Order in this matter requires that only "extremely sensitive 'CONFIDENTIAL  
 28 Information or Items,' disclosure of which . . . would create a substantial risk of serious harm that  
 could not be avoided by less restrictive means" qualifies for the designation of "Highly  
 Confidential-Attorneys' Eyes Only." Dkt. 28 at 2.

1 disclosure,” *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178–79 (9th Cir. 2006)  
 2 (citations omitted). This Court has recognized that “[i]t would be perverse to hold an individual  
 3 entitled to no protection where a company amalgamates many pieces of information about that  
 4 individual’s preferences on the grounds that revealing any one preference is no big deal.” Order  
 5 Granting in Part and Den. in Part Pls.’ Mot. to Seal at 17, ECF No. 77 (Oct. 3, 2023) (“Order”).  
 6 This especially holds where the parties quote “audiences” selected to convey particularly  
 7 sensitive information about Plaintiffs.

8 Oracle’s audiences and segments are uniquely generated for each Plaintiff and reveal  
 9 intimate personal information, decisions, and activities that should be kept private. *See In re*  
 10 *Facebook, Inc. Internet Tracking Litig.*, 956 F.3d 589, 604 (9th Cir. 2020) (finding Plaintiffs had  
 11 a privacy interest in “highly personalized profiles from sensitive browsing histories and habits”  
 12 that were collected and compiled about them). It would be incongruous to require public  
 13 disclosure of sensitive personal information to litigate claims brought to protect that information.  
 14 This Court has recognized Plaintiffs’ cognizable legal interest in protecting information about  
 15 their “likes, dislikes, interests, and habits,” Order at 17 (quoting *In re Facebook*, 956 F.3d at 599);  
 16 this data, “when combined with other data points across masses of data, may be exploited to  
 17 deduce startlingly personal characteristics,” 105 Cal. Op. Att’y Gen. 26 (2022) (available at 2022  
 18 WL 815641, at \*5) (citations omitted). Placing their “startlingly personal characteristics” in the  
 19 public record would harm Plaintiffs.

20 By contrast, the public has only a minimal interest in learning sensitive details about  
 21 Plaintiffs’ lives. *See Ctr. for Auto Safety*, 809 F.3d at 1096 (presumption of public access is based  
 22 on the interests of “accountability and for the public to have confidence in the administration of  
 23 justice,”) (citations omitted). Plaintiffs’ Surreply Brief demonstrates the highly sensitive  
 24 categories that Oracle maintains and sells about individuals. However, revealing Plaintiffs’  
 25 political activities and other sensitive information will not aid the public’s “understanding [of] the  
 26 judicial process.” *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 679 n.6 (9th Cir. 2010) (citations  
 27 omitted). As the Court previously found, “even with redactions, [Plaintiffs’ documents] still  
 28 communicate to the public the types of information that are at issue in this action.” Order at 17.

1           In this instance, Plaintiffs have compelling reasons to seal their private material that  
2 outweigh the public's interest in its disclosure. Plaintiffs respectfully request that the Court Seal a  
3 Portion of Defendant's Surreply Response in Support of Defendant's [Third] Motion to Dismiss  
4 Portions of the Second Amended Complaint.

5

6           Dated: March 22, 2024

*/s/ Michael W. Sobol*

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